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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

NO_____

CURTIS L. WRENN
95 Champion Street
West Carthage, NY 13619,

Petitioner,

vs

VANDERBILT UNIVERSITY HOSPITAL; JOHN C. CALLISON, VANDERBILT UNIVERSITY HOSPITAL; SECRETARY, DEPARTMENT OF HEALTH & HUMAN SERVICES; CHAIRMAN, U.S. EEOC; & U. S. ATTORNEY GENERAL, DEPARTMENT OF JUSTICE.

Respondents.

BRIEF FOR PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
DOCKET NOS. 93-5994; 93-6181

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30 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the denial of information under the FOIA, by the EEOC, DHHS and DOJ, was contrary to decisions of this Court?

2. Whether the sanction (without explanation) imposed on the petitioner in favor of the EEOC, by the District Court, was contrary to Rule 11, Title VII, the ADEA and decisions rendered by this Court?

3. Whether sanctions by District Court, without a hearing, violated the Fourth, Fifth, and Fourteenth Amendments?

4. Whether the imposition of "double costs" by the CA against petitioner violated his rights, privileges and immunities under Title VII, the ADEA, and the FOIA?

5. Whether the imposition of "double costs", was contrary to the following Amendments: First (free speech), Fourth (unreasonable seizures), Fifth (denial of a due process hearing), Eighth (excessive fine AND cruel and unusual punishment) and

the Fourteenth (procedural due process).

6. Whether the District Court's refusal to acknowledge petitioner's prima facie case of unlawful denial of equal employment opportunity led to an erroneous conclusion of law?

7. Whether the Court of Appeals' characterization of the petitioner as "African American" constitutes wanton and malicious effort to justify its unsupported decision, in that to the knowledge of the petitioner there is no such race of people which anthropologists have classified as "African American". (NOTE: The records in the case clearly demonstrate the petitioner has repeatedly stated that he is a member of the Negroid race)?

8. Whether petitioner has a "right" to file a complaint in the appropriate district court, under the FOIA, after he has exhausted his administrative remedies concerning the denial of information?

9. Whether the Department of Justice has authority to assist an individual, under Title VII, who alleges that he is a victim of pattern and practice unlawful employment discrimination?

10. Can an employer avoid being found guilty of unlawful employment discrimination by alleging it considered a Negroid person but not another who was apparently more qualifed for the position at issue?

11. Whether the sanctions and double costs imposed on the petitioner, without a due process hearing, contravenes this Court's decision in Austin v. U.S. 61 LW 4811 (1993) (Also, 62 LW 2376 (1993)) AND other related decisons by the Court?

12. Whether the "weighing" of the evidence by the District Court was a clear abuse of discretion in granting summary judgment to the respondents? (App F p.48).

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REFERENCE TO DECISIONS BELOW
(DETAILED IN PETITIONER'S APPENDIXES)

1 - Order, Sixth Circuit CA, 31 Jan 94

2 - Order, Sixth Circuit CA, 14 Mar 94

3 - Order, Sixth Circuit CA, 15 Mar 94

4 - Order, Sixth Circuit CA, 18 Apr 94

5 - Memorandum and Order, District Court, Middle District of TN, 10/15 Jun 93

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1254(1), 1651 and 1915.

Jurisdiction is also invoked under the Constitution and laws of the United States, including but not limited to the First, Fourth, Fifth, Eighth and Fourteenth Amendments; Title VII of the Civil Rights Act of 1964 as amended; Age Discrimination in Employment Act; and the Freedom of Information Act/Privacy Act, in that the decisions of the lower courts, if permitted to stand, will deprive the petitioner of equal employment opportunity, right of access to information compiled of him by federal agencies, and more importantly will deprive him of procedural due process rights, right of freedom of speech and the right of access to information compiled of and about him by agencies of the USA.

The jurisdiction of this Court is also invoked to have the Court review the actions of the lower courts, in that they have rendered decisions which if not reversed by this Court will contravene prior decisions of the Court and will invalidate Congressional mandates, including but not limited to Title VII and the ADEA. Also, the decisions are conflict with decisions of the other courts of appeals.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I:

> Congress shall make no law ... abridging the freedom of speech ...; or the right of the people to peaceably ... to petition the Government for a redress of grievances.

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, ... against unreasonable ... seizures, shall not be violated ...

United States Constitution, Amendment V:

> Nor shall any person ... be deprived of life, liberty, or property, without due process of law ...

United States Constitution, Amendment VIII:

> Excessive bail bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

United States Constitution, Amendment XIV:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United Statesl; nor shall any State deprive any person of ... property, without due process of law; ..."

STATEMENT OF THE CASE

1. The issues in this case arose in 1990 when the petitioner was denied employment by Vanderbilt University Hospital for the position of Assistant Hospital Director. The employer advertised that it was accepting applications from individuals who met the advertised requirements. The petitioner submitted his application (App J) and despite having more than fifteen years of health care management experience, he was not considered, including not being interviewed.

2. The petitioner filed complaints with EEOC and DHHS following the denial of employment. Upon receiving the EEOC's Determination, he filed a request for information under the FOIA from the EEOC and also filed this lawsuit. (App J).

3. The Original Complaint was amended to add EEOC, DHHS and DOJ. The reason being correspondence and documents in petitioner's

possession demonstrated collusion, and aiding and abeting by the federal agencies and Vanderbilt's officials. (App M-R).

4. The FOIA request to the EEOC was denied in part and granted in part. The petitioner filed his appeal of the denial of the FOIA with the District Court.

5. On 10 Jun 93 the District Court dismissed all claims, alleging the petitioner "was not qualified" for the position at issue,"the Court does not find that the plaintiff has stated a viable claim under the FOIA", and that the "Court finds that the plaintiff's claims of conspiracy ... are without merit and are barred by the doctrine of res judicata".

6. The District Court's decision was appealed to the Sixth Circuit. The CA dismissed the appeal and impposed "double cost" allegedly because the appeal was frivolous. No facts or lack thereof was cited as a basis for the allegation.

REASONS FOR GRANTING WRIT

The Court should grant the petition on the grounds that the decisions of the lower courts, concerning the issues presented below, are clearly erroneous, in that the decisions are not supported by the facts of record nor applicable law. See, e.g., Pullman Standard v. Swint, 456 U.S. 273, 287-90, 102 S.Ct. 1781, 1789-91, 72 L.Ed.2d 66 (1982).

A. DENIAL OF INFORMATION UNDER FOIA:

1. The FOIA (5 USC 552(a)(3) provides:

> "An FOIA appeal can be filed in the ... the district where the requester lives. The requester can also file in the district where the documents are located or in Washington, D.C."
>
> -and-
>
> "When a requester goes to court, burden of justifying the witholding of documents is on the government."

2. The District Court dismissed the FOIA claim against the EEOC stating "the Court does not find that the plaintiff has stated a viable claim under the FOIA". See Appendix E and T. The court conveniently

ignored a long list of decisions by this Court. See e.g., Dept. of Justice v. Reporters Committee, 489 U.S. 749, 109 S. Ct. 1468,1481, 103 L.Ed.2d 774 (1989). See also EEOC v.Associated Dry Goods, 449 U.S. 590, 24 FEP 1356 (1981) (where the Court ratified the EEOC's practice of disclosing the investigative file to a charging party from his own file).

3. The CA upheld the District Court's decision despite the record showing that there was no "de nova" review. More important, there was no effort to have the EEOC justify its nondisclosure of information. Finally, the petitioner's factual and legal theories were apparently NOTCONSIDERED. See e.g., App J, N, S and T.

B. SANCTIONS IMPOSED BY DISTRICT COURT:

1. At issue is whether the pleadings and incorporated exhibits demonstrate that the petitioner's claims are frivolous or without foundation. The following

appendices clearly demonstrate that he had a legitimate basis for filing this lawsuit:

J - Original Complaint showing denial of equal employment opportunity.

K - Petitioner's application showing that he has more than fifteen years of health care management experience in hospitals of various sizes and functions including teaching.

L - The resume of the white female that was hired indicates she has had NO health care management experience.

M - First Amended Complaint showing Respondent Callison was part of the "list of attorneys" the Department of justice had offered to assist; how the DOJ informed the petitioner it did not "have authority to assist individuals"; how DOJ had assisted a convicted drug trafficker in a foreign country; how DOJ/FBI refused to process and/or investigate petitioner's conspiracy complaint concerning federal, state and private employers; how DHHS circulated a document nation-wide alleging an "extortion charge" against the petitioner, while at the same time refusing to process and/or investigate his charges against private and public employers, as is required by Title VI; and how DOJ and DHHS had denied petitioner's FOIA request. See also App M, O-P, Q-R.

T - Petitioner's FOIA request and denial by EEOC.

2. A review of the above will clearly show that petitioner's claims ARE NOT baseless nor are they without foundation. Thus the sanctions imposed on him were not determined by an "objective standard of reasonableness" as required by Business Guides v. Chromatic Communications Enters., 111 S.Ct. 922,112 L.Ed.Ed 1140 (1991).

3. The decisions of the lower courts in this case are not only contrary to this Court but the other CAs as well. See,e.g. McGinnis v. Ingram Equipment Co., CA 11 (en banc), No. 88-7596, 27 Nov 90, 59 LW 2363, 18 Dec 90, where the court stated:

> "We are aware of no case in which court imposed sanctions on a part who had acknowledged adverse precedent, but argued that the precedent should be reversed. Rule 11 simply is not intended to chill a an attorney's enthusiasm or creativity in pursuing factual or legal theories."

4. The question is whether the same "objective standard" apply to the Sixth Circuit? Also, whether the same "objective standard" apply to Wrenn?

C. "DOUBLE COSTS" IMPOSED BY CA:

1. The issue here is whether the factual and/or legal theories advanced by the petitioner IS SO LACKING IN MERIT that the imposition of double costs were warranted. Also, whether the imposition of double costs constitute: excssive fine, unreasonable seizure and unlawful deprivation. The claims at issues are based on "facts" or "circumstantial evidence". See App J (Complaint With Jury Demand); K (application for employment); L (successful applicant who is a white female "health care provider" with no apparent health care management experience); and M and O-R (showing "circumstantial evidence" of "cooperation and assistance" by DOJ.

2. The essential question is "Did the denial of a hearing in connection with the imposition of double costs, violate the petitioner's rights under the Constitution?" A review of recent decisions of this Court suggest that petitioner's right to a "mean-

ingful hearing at a meaningful time" was clearly violated. Not only was he denied hearing, the Court of Appeals pointed to facts or the lack thereof which could support the principle that a reasonable person would not have decided, on the basi of the relevant facts and legal theories, i the petitioner's favor. Of great importanc here are App J, L, M, N, P, Q and T.

3. The facts and argument in this cas clearly suggest, despite this being a "civil" rather than a "criminal" matter, that the petitioner's rights were violated. See, e.g., U.S. vs. James Daniel Good Real Property, U.S. Sup. Ct., No 92-1180, 13 Dec 93, 62 LW 4013 (Holding that: Absent exigent circumstances, the Due Process Claus requires the Government to afford notice and meaningful opportunity to be heard ...); and Austin v. U. S. Sup. Ct (1993), 61 LW 4811, 62 LW 2276 (1993) (Where the Court held the

Eighth Amendment doesn't depend on whether the forfeiture proceeding is criminal or civil, but rather on whether it is "punishment".) (It is undisputed that the sanctions herein complained of (filing restrictions, award of attorney fees and double costs) were imposed as "punishment" SOLELY because the petitioner exercised his rights.

D. PRIMA FACIE EMPLOYMENT DISCRIMINAITON:

1. At issue is whether the petitioner met the requirement of a prima facie case as is required by McDonnell Douglas Corp v. Green, 411 U.S. 792, 802 (1973). The lower courts said no, and stated he was "not qualified" and "he has utterly failed to prove that the circumstances give rise to an inference of discrimination. Petitioner submits that the courts have either misread or did not consider his application (App K) for the position. His resume details his health care management experience since 1970. Moreover, he was not interviewed while less qualified person were. For

example, the white female at App L. Thus it appears proper weight was not given to petitioner's qualifications (considering he previously held key positions: Associate Director, Administrator, and Chief Executive Officer) for the position at issue (Assistant Hospital Director). Moreover, there was no mentioning by either court of the lack of qualifications by the successful applicant, who was at the time a "health care provider" as opposed to the petitioner who has been a health care manager/executive since November 1970, following his retirement from the United States Army.

2. The decision here is not only contrary to McDonnell, it is contrary to the other courts of appeals. See, e.g., Burrus v. United Telephone Co. Kansas, Inc., (CA Kan 1982), 683 F.2d 339 (Objective job qualifications are to be considered in determining whether employment discrimina-

tion plaintiff has established prima facie case, but subjective criteria are to be treated at later stage of McDonnell Douglas, three-step process).

E. RACIAL CHARACTERIZATION BY CA:

1. The Court of Appeals statement that "Wrenn is African American ..." is pointed out here as another (see objective qualification at App K and "2" above) example where it appears that petitioner's pleadings and incorporated exhibits were given little if ANY weight. There is the question of whether his pleadings and his exhibits were EVEN considered. Ques: How did the CA determine "Wrenn is African American" when he did not appear before the court nor include such a designation in his pleadings?

2. If the petitioner's pleadings and incorporated exhibits were read AND considered, how did the CA determine that he was a member of some non-existent racial group such as African American.

F. AUTHORITY OF DOJ UNDER TITLE VII:

1. On December 6, 1983 in a letter addressed "To attorneys defending lawsuits by Mr. Curtis L. Wrenn" DOJ informed the attorneys that "Our office is willing to become a clearing house for exchange of information which may be useful in defending these case." Including in the list of attorney was John C. Callison, Esq., Office of General Counsel, Vanderbilt University.

2. On March 13, 1986 the petitioner asked DOJ to assist him in thirten cases of unlawful employment discrimination which the EEOC had determined that there was "reasonable cause to believe that the allegation of race discrimination is true". In a letter dated 14 Apr 1986 DOJ informed the petitioner "Since Department of Justice is not authorized to give legal assistance to private citizens or to represent them, we are unable to provide assistance to you in your cases."

3. At issue is whether DOJ is authorized to assist the petitioner or other "private citizens, in employment discrimination cases. Since at least 14 Apr 86 DOJ has maintained that it does not have authority assist the petitioner, while at the same time it was assisting other "private citizens", including the attorneys above, convicted drug trafficker, and recently filing a complaint in Aurora, CO on behalf of a person under the Disability Act.

4. The response by DOJ to petitioner's requests for assistance appear to be in conflict with the agency's actions, and more importantly contrary to The EEOC Act (Sec 706(f)(2) and 707(a)) and the Reorganization Plan No. 1 issued by President Carter in 1978. FOIA requests to DOJ for information concerning this subject has received no response to date.

G. INDIVIDUAL RIGHTS UNDER TITLE VII:

1. Title VII was enacted by Congress to remove artificial and arbitrary barriers to employment. Connecticut v. Teal, 457 U.S. 440,447, 102 S.Ct. 2525, 2531, 73 L.Ed.2d 130 (1982).

2. The CA held in its decision of 31 Jan 94 (App A) that Wrenn:

"While he can prove the first element of a prima facie case-Wrenn is African American (NOTE: The petitioner does not know how the CA came to this conclusion) and was over the age of 40 at the time of his application--he has utterly failed to prove that the circumstances give rise to an inference of discrimination. The position at issue was first offered to a black male. After he withdrew his name from consideration, the position was offered to a white female over the age of 40, who accepted it. These actions on the part of Vanderbilt belie any discriminaorty motive. Thus, despite Wrenn's assertion that he was qualified for the position, he cannot satisfy the fourth element of a prima facie case."

3. Despite a clear articulation of the prima facie requirements of McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973), the CA ignored the fact that a plaintiff may prove his claim by direct or circumstantial evidence. Thus the Sixth

Circuit is in conflict with the Fourth Circuit and other CAs. See, e.g., Brady v. Thurston Motor Lines, 726 F.2d 136 (4th Cir 1984). See also, Domingo v. New England Fish Co., 727 F.2d 1429 (CA Wash 1984). And see also App D-F, K-L, and O-P.

4. The CA would have us believe that because a "black male was offered the position at issue" Wrenn cannot establish a prima facie case. The CA conveniently ignored this Court's decision in Teal:

(1) "... irrespective of the form taken by the discriminatory practice, an employer's treatment of other members of the plaintiffs' group can be "of little comfort to the victims of ...discrimination." at 2535.

(2) "...Title VII protects individuals, not groups, and therefore that the manner in which an employer has treated other members of a group cannot defeat the claim of an individual who has suffered as a result of even a facially neutral policy.." at 2538-2539

H. DENIAL OF PROCEDURAL DUE PROCESS:

1. The issue here is whether the decisions of the lower courts are contrary

to Constitution and laws of the United States. See A-F, and compare with App F-J, and N-R.

2. The pleadings and incorporated exhibits in this case clearly demonstrate that the decisions of the lower courts are clearly erroneous. More importantly, the decisions are contrary to decisions of this Court.

3. Petitioner requests the Court to apply its decision in U.S. v. James Daniel and Austin v. U.S. to the issue in this case. It is undisputed that the petitioner repeatedly requested, but was denied, his Procedural Due Process hearing. Petitioner maintains that if such a hearing had been held the clouds of false and/or misinformation by the respondents would have been made clearer to the courts. Some examples:

(1) Comparative qualifications of Wrenn and Rogers (App K and L) could have been reviewed/discussed.

(2) The FOIA claim against the EEOC (App T) could have been examined and clarified.

(3) The facts relied on to show a conspiracy (App M-R) in all likelihood would have been accepted.

I. RES JUDICATA

1. As a basis for invoking "res judicata" for dismissing the petitioner's claims against the federal defendants, the District Court and the CA cite other FOIA claims and conspiracy claims he has filed in other federal courts. The courts conveniently ignored the restrictions of the FOIA. As a result the CA alleges "we find the appeal to be frivolous and brought for the purpose of harassment.." The CA cite no facts and/or lack of facts to support its allegation. More importantly, the CA did not cite how or on what basis it determined that the appeal is frivolous.

2. The lower, courts have failed and/or refused to demonstrate how other claims the petitioner has filed is somehow related to or similar to his claims against the federal defendants, and Vanderbilt University Hospital and its agent/legal

counsel (John Callison). The petitioner respectfully submits that the "other claims" are similar ONLY in that they were filed under the same statutory law (The FOIA). The courts are aware that the FOIA provides ONLY three places to file a claim: district where the requester resides or where the records are maintained, or Washington, DC. In the case at bar, believing that the records were in Nashville (Office of the EEOC or Vanderbilt) considering this is where the discriminatory practices occurred. the petitioner filed his complaint here. (NOTE: No claim involving the EEOC, DHHS, DOJ and Vanderbilt could have been filed in another court. That is why the claim was filed in Nashville AND more importantly why any attempte to show res judicata must be rejected).

3. Of particular concern in this case is the unarticulated suggestion by the courts that the FOIA and conspsiracy claims against the federal defendants and Vander-

bilt University Hospital were required to be or at least could have been filed with his other claims in other district courts. Such is totally irresponsible thinking, considering the restrictions imposed by the FOIA.

4. Res iudicata does not apply for two reasons: (1) petitioner had not as of the date this claim was filed received a decision on the merits of his claims, and (2) the respondents and the courts cite no example where the petitioner received a decision on the merits of the claims herein presented. Thus, the decision of the Sixth Circuit is contrary to decisions of this Court and the other courts of appeals. See, e.g., Harnett v. Billman, 800 F.2d 1313 (4th Cir. 1987). Also, Montana v. United States, 440 U.S. 147,153, 99 S. Ct. 970,973, 59 L.Ed.2d 210.

CONCLUSION

The Court should grant the writ of certiorari to review the actions of the lower courts, primarily because the decisions of the courts, if permitted to stand, will contravene decisions of this Court and the other courts of appeals. Moreover, if the sanctions imposed by the Sixth Circuit is permitted to stand it will discourage other citizen from challenging perceived unlawful employment practices or other unlawful acts because of the fear of retaliation by various federal agencies and the federal courts if they question an unsupported and/or unlawful decision by either of them.

Respectfully submitted,

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